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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.V., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.V.,

Defendant and Appellant.

E070138

(Super.Ct.No. J263232)

OPINION

APPEAL from the Superior Court of San Bernardino County. Pamela P. King,
Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Nora S. Weyl,
Deputy Attorneys General, for Plaintiff and Respondent.

An amended Welfare and Institutions Code section 602 petition filed against defendant and appellant A.V. (minor) alleged that he committed one count of attempted murder (Pen. Code,¹ §§ 664, 187, subd. (a), count 1), and two counts of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4), counts 2 & 3). Minor admitted count 2, and a juvenile court found the allegation true. The court then dismissed counts 1 and 3, pursuant to the People’s motion. The court committed minor to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) for a maximum term of four years.

On appeal, minor argues that the court abused its discretion in committing him to DJJ. We affirm.

FACTUAL BACKGROUND²

Minor got into an argument with his grandmother and pushed her on to a couch. He then retrieved a metal baseball bat from his room and attacked her with the bat. He struck her with the bat several times in the face, head, arms, and hands. Minor’s 13-year-old sister tried to stop the fight, but minor hit her with the bat, as well. Minor dropped the bat and demanded his grandmother’s gun so he could kill himself. She told him she gave the gun to their neighbor. Minor went to the neighbor’s house and asked him for the gun, stating that he had just done something “very bad to his grandmother and sister.”

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² Minor admitted the allegations as true; thus, this brief factual background is taken from probation department reports.

The neighbor refused and threatened to call the police, so minor fled. The neighbor went to check on minor's grandmother and sister, and when he returned, he realized one of his guns was missing.

Minor's grandmother and sister managed to escape and run outside, where they flagged down the police. They were transported to the hospital for immediate attention. His grandmother suffered a laceration that resulted in 16 staples to her head, a concussion, and two broken fingers, which would require surgery. Minor's sister suffered a concussion, a broken arm, and a compound fracture to her pinky finger.

The police searched for minor and eventually found him at his grandmother's house the following day. He was in bed, and he appeared to be under the influence of drugs or alcohol. They spotted what appeared to be a firearm on the floor. Minor said he took 35 Xanax pills the night before, in an attempt to kill himself.

ANALYSIS

The Juvenile Court Properly Committed Minor to DJJ

Minor argues that the court abused its discretion in committing him to DJJ, because there was no evidence showing that a DJJ commitment would provide a probable benefit to him, and less restrictive alternatives were either ineffective or inappropriate. We find no abuse of discretion.

A. Procedural Background

On December 24, 2015, minor admitted the allegation that he cut a utility line. (§ 591.) He committed this offense in an attempt to keep his grandmother from calling the

police. The court found the allegation true, declared him a ward, and placed him on probation in the custody of his grandmother.

On January 12, 2016, minor was arrested for battery with serious bodily injury (§ 243, subd. (d), count 1) and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4), count 2). It was alleged that he got into a physical altercation with a victim and struck the victim multiple times with his fist. The victim had to get seven stitches to his upper lip. On February 1, 2016, minor admitted the allegation in count 1, and the court found it true. The court continued him as a ward in his grandmother's custody, on specified terms of probation, and ordered him to serve 21 days in custody. The court dismissed count 2.

On May 9, 2016, a petition was filed, alleging that minor violated the probation conditions that he be home every night by curfew, and that he attend school daily. A bench warrant was issued on May 10, 2016. Minor was on warrant status for a year, from May 2016 to May 2017.

On May 11, 2017, minor was arrested. He was living with his girlfriend and her mother. He said he was going to school for a while, but lost motivation and stopped going. He admitted the allegation of failing to obey the court's order to comply with the curfew, and the court dismissed the other allegation. The court continued him as a ward and ordered him to serve 27 days in custody.

On August 17, 2017, an amended subsequent petition was filed, pursuant to section 602 (the instant case). The petition alleged that minor, who was 16 years old at

the time, committed one count of attempted murder (§§ 664, 187, subd. (a), count 1), and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4), counts 2 & 3).

The probation officer interviewed minor's grandmother on the phone. She said she had raised minor for most of his life, and he had always been difficult. He refused to attend school, and when he did, he had behavioral problems. His behavioral issues at school included biting another student, making obscene gestures, engaging in a physical altercation with another student, bringing a pocket knife to school, and smoking on campus. In 2013, he was suspended from riding the school bus for three days for harassing the bus driver by hitting the back of his seat while he was driving. In 2014, minor was suspended from riding the bus as a result of jumping out of the emergency exit.

On August 29, 2017, minor had a psychiatric evaluation during which he expressed resentment toward his grandmother and called her incompetent. Minor admitted to wanting to kill himself to avoid the consequences he was facing. Minor was easily overwhelmed by his emotions and had persistent negative thoughts about himself and others. He knew his behavior was wrong, but had little sense of control over his behavior. Minor told the probation officer that "none of this would have happened if you would have picked up your phone." Minor seemed to be going through the motions of expressing remorse, without emotion or sympathy. He believed he had already suffered enough and his time already served in custody was sufficient.

The probation officer evaluated minor to determine if he was amenable to the care, treatment, and training programs available through the facilities of the juvenile court.

The officer noted that minor had not learned from his past mistakes and failed to comply with his probation terms. The officer opined that his delinquent behavior had escalated in severity. Due to the nature of the current offense, he was not eligible for the Gateway Program. The probation officer noted that his actions in the current offense were particularly heinous, since the victims were his family members. His grandmother had raised him most of his life. In view of the seriousness of the offense and minor's past impulsive, delinquent history, the probation officer believed the services available through the juvenile court were past his level of rehabilitation. The officer acknowledged her duty to choose the least restrictive option for rehabilitation, but noted the purpose of the code was to provide for the protection and safety of the public and minor under the jurisdiction of the court. The officer noted that minor's grandmother was the only responsible, consistent adult in his life, and she was fearful of him and requested that he never be allowed to contact her again. His mother was in prison for burglary, and minor had only met his biological father four years prior. He was sent to live with his father, but the stay only lasted approximately three weeks, due to their inability to get along. Since then, minor had not had any contact with his father. The probation officer opined that minor's impulsiveness and inability to maintain self-control posed a grave risk to himself, the victims in this case, and the community. Thus, she recommended the court find minor not fit and proper for consideration of treatment and care under juvenile court law.

The court held a hearing on November 7, 2017. Minor admitted one count of assault by means likely to produce great bodily injury (§ 245, subd. (a)(4), count 2), and

the court found the allegation to be true. The court dismissed counts 1 and 3 and continued the matter.

The probation department filed a disposition report on November 17, 2017. The probation officer reported that minor had only 30 credits for his entire high school career. He was 180 credits short of graduating, due to his poor attendance. As of the writing of the report, minor had not been in school for over one year, due to being on warrant status.

Furthermore, the probation officer reported that minor had a psychiatric evaluation and was diagnosed with Major Depressive Disorder, Unspecified Bipolar and Related Disorder, Conduct Disorder, Adolescent-Onset type, Specific Learning Disorder with impairment in math, and Cannabis Use Disorder. He was not medication compliant when not in custody. He self-medicated with marijuana regularly and admitted to recently using acid.

The probation officer reported that while minor had been staying at the juvenile detention center, he was involved in an incident where he passed his medication on to his cell mate, who then distributed it to another youth. Additionally, minor had been openly masturbating in his room in front of female staffers, despite being talked to about the matter.

The probation officer further reported that “[a]ll options were considered,” including placement; however, given minor’s ability to evade probation and maintain warrant status for a year, it was not a viable option. The officer stated that she considered the Gateway program (Gateway) and sent a referral packet for screening. However, Gateway rejected minor for the following reasons: (1) the charges and circumstances

resulted in extremely volatile situations, and minor's propensity toward violence placed other youth, staff, and the community at high risk; (2) minor had severe mental health issues that were far beyond what Gateway could service, including suicidal behaviors, manipulations, and attempts; (3) minor was currently on single cell status and was not eligible for Gateway while on that status; he also continued to masturbate in front of staff and others; and (4) minor was an addict and needed intensive drug treatment, beyond what Gateway could address.

The probation officer contacted the DJJ and was informed that, if committed, minor would receive a discharge consideration date of two years from his commitment date, and he would be offered a variety of programs. To address his educational needs, he would be provided with a high school graduation plan, tailored to his needs to assist him in earning his diploma. Once he received his diploma, he would be eligible to participate in postsecondary education programs to earn college credits. For his rehabilitation needs, there would be programs available, such as aggression interruption training, which was a 10-week cognitive behavioral intervention to help improve social skills; counter point, which was a cognitive behavioral program for male offenders to reduce the risk of reoffending, interventions for substance abuse; and advanced practice, which was a program that offered a more rigorous practice of social skills. DJJ also used interactive journals designed to respond to individual treatment issues. Minor would also be provided with a mental health treatment plan that utilized "an evidence-based continuum of care based on principles of effective interventions." The interventions would include trauma focused cognitive behavioral treatment, psychopharmacological

services, and “specific interventions for diagnosis extracted from existing research.”

Given minor’s history, lack of cooperation with probation, the increase in severity of his past offenses, and the heinous nature of his current offense, the probation officer opined that DJJ was the best option for him.

The court held a contested dispositional hearing on January 22 and 23, 2018. The probation officer testified and acknowledged that minor had never been placed outside of the home and had never been to DJJ; however, she believed he should be committed to DJJ since he was a flight risk, and he would have access to the victim(s). She also admitted that she had never placed anyone with the mental health issues minor had in DJJ, and she did not know if the programs DJJ offered had actually worked for those with similar mental health issues. One of the main factors for her recommendation was that, when minor was in custody, he was medication compliant; however, when he was not in custody, he was not medication compliant. When asked if she had considered in-state placements prior to deciding on DJJ, she said yes and confirmed that she “considered all options.” She said she “went through the . . . probation placement unit to get an overall statement” since they were aware of what placements were available to treat minor.

After hearing testimony from the probation officer and minor, as well as argument from counsel, the court concluded that it would follow the recommendation of the probation department and commit minor to DJJ. The court took into account the circumstances of his background, as well as the risk he posed to others. It specifically found that minor was under the age of 18 when he committed the current offense, and his mental and physical conditions and qualifications rendered it probable that he would

benefit from the discipline or other treatment provided by DJJ. The court noted that minor had been declared a ward of the court and was committed based on three sustained petitions—his 2015 petition for cutting a utility line (§ 591), his 2016 petition sustained for battery with serious bodily injury (§ 243, subd. (d)), and the current petition for assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)). The court stated that the maximum period of confinement was four years, minus 228 days of time served. The court continued minor as a ward of the court, placed him in the custody of the probation officer to be detained in juvenile hall, and committed him to the DJJ.

B. Standard of Review

“We review a commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court.” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473 (*Asean D.*); see *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395 (*Michael D.*)). An appellate court will not lightly substitute its decision for that of the juvenile court. It “must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” (*Michael D.*, at p. 1395.)

C. There Was No Abuse of Discretion

In determining placement in a juvenile delinquency case, the court focuses on the dual concerns of the best interest of the minor and the need to protect the public. (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) The 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the protection and safety of the public. (*Michael D.*, *supra*, 188 Cal.App.3d

at p. 1396.) Since retribution must not be the sole reason for punishment, there must be evidence demonstrating probable benefit to the minor and the inappropriateness or ineffectiveness of the less restrictive alternatives. (*Ibid.*; *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) The court may consider a commitment to DJJ without first having tried less restrictive placements. (*Asean D.*, *supra*, 14 Cal.App.4th at p. 473.) In arriving at a disposition, the court considers the probation officer's report and any other relevant and material evidence that may be offered. (*Jimmy P.*, at p. 1684.)

Based on the record before us, we conclude the court's decision to commit minor to DJJ was not an abuse of discretion. There was adequate evidence in the record to support the court's determination that, in minor's interest and the interest of public safety, a DJJ commitment was the best available option. There was evidence before the court that minor posed a significant risk to public safety. He had a prior record, which included the offenses of cutting a utility line (§ 591) and battery with serious bodily injury (§ 243, subd. (d)). With regard to the first offense, minor cut a telephone line in an attempt to prevent his grandmother from calling the police. With regard to the battery offense, it was alleged that minor got into a physical altercation with a victim, resulting in the victim getting seven stitches to his upper lip. Moreover, the current offense was very serious. Minor became angry and frustrated and attacked his 64-year-old grandmother and his 13-year-old sister, with a metal baseball bat. Minor admitted that he lost control of his impulses and therefore could not control his actions.

In regard to the probable benefit minor would obtain from a DJJ commitment, the evidence showed that he would be offered a variety of programs. To address his

educational needs, he would be provided with a high school graduation plan, tailored to his needs to assist him in earning his diploma, and then postsecondary education programs to earn college credits. For his rehabilitation needs, DJJ offered a 10-week cognitive behavioral intervention to help improve social skills, a cognitive behavioral program for male offenders to reduce the risk of reoffending, interventions for substance abuse, and a program that offered a more rigorous practice of social skills. In addition, minor had been diagnosed with multiple disorders, and DJJ offered a mental health treatment plan that utilized “an evidence-based continuum of care based on principles of effective interventions.”

With regard to the inappropriateness or ineffectiveness of less restrictive alternatives, the evidence showed that minor’s grandmother, who had been his primary caregiver for most of his life, was the only responsible, consistent adult in his life; however, she was afraid of him and requested that he never be allowed to contact her again. Minor’s mother was in prison for burglary, and minor had not had any contact with his father for years. Thus, there were no apparent relatives to take custody of him. The probation officer testified that she considered all options, including placement; however, given minor’s ability to evade probation and maintain warrant status for a year, placement was not a viable option. The officer did send a referral packet to Gateway, but Gateway rejected minor for several reasons, including that he had severe mental health issues, intense drug problems beyond what they could service, and he had a propensity for violence that posed a risk of danger to others.

Additionally, the probation officer considered minor's history, lack of cooperation with probation, the increase in severity of his past offenses, noncompliance with medication when out of custody, and the heinous nature of his current offense. She opined that minor's impulsiveness and inability to maintain self-control posed a grave risk to himself, the community, and the victims in this case. Therefore, she determined that the best option for him was DJJ. On this record, we conclude that less restrictive alternatives were properly considered. In any event, as defendant admits, "a commitment to the [DJJ] may be made in the first instance, without previous resort to less restrictive placements." (*Asean D.*, *supra*, 14 Cal.App.4th at p. 473.)

In sum, the juvenile court considered all the proper factors and ultimately followed the probation officer's recommendation that minor be committed to DJJ. We find no abuse of discretion.

DISPOSITION

The judgment is affirmed.

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McKINSTER

J.

We concur:

RAMIREZ

P. J.

RAPHAEL

J.